



UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of

Jacobs, et al

Application No. 08/120,303

Filed: 13 September, 1993

Attorney Docket No. JJM-85

ON PETITION

This is a decision on the petition filed on 12 February, 2002, and resubmitted via FAX on 18 February, 2004, to revive the application under 37 C.F.R. §1.137(b).

The Office regrets the delay in addressing this matter.

For the reasons set forth below, the petition is **GRANTED**.

NOTES:

(1) The Associate Power of Attorney (authorizing Andrew C. Farmer (Reg. No. 35,368) to act and designating Philip S. Johnson as addressee) filed on 12 February, 2002, is hereby acknowledged and accepted.

(2) Petitioner might consider calendaring Status Requests at shorter intervals to reduce potential for delays in matters such as this.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the final Office action mailed on 18 July, 2001, with a reply due absent a request and fee for extension of time on or before Thursday, 18 October, 2001;
- a result, the application was deemed abandoned after midnight 18 October, 2001;
- as evidenced by a copy of a date-stamped receipt card, before Notice of Abandonment was mailed, Petitioner filed the instant petition (with fee authorization) on 12 February, 2002, along with an Associate Power of Attorney, Terminal Disclaimer (with fee authorization) and a Notice of Appeal (with fee authorization) as the required reply;
- Notice of Abandonment was mailed on 29 March, 2002, however, as noted above, the petition to revive previously had been filed;
- on 9 January, 2004, Petitioner and Counsel (Andrew C. Farmer) filed a "Status Request," however there is no indication of record that the Office responded to the inquiry;
- on 18 February, 2004, a copy of the previously filed petition, power of attorney, Notice of Appeal and fee authorizations.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unintentional." 35 U.S.C. §41(a)(7). The regulations at 37 C.F.R. §1.137(b) set forth the requirements for a petitioner to revive a previously unintentionally abandoned application under this congressional grant of authority. Petitioner must be diligent in attending to the matter.¹ Failure to do so does not constitute the care required under Pratt,² and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.³))

¹ See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office *supra*.

² Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); see also: Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

³ Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Application No. 08/120,303

Allegations as to Unintentional Delay

Petitioner has satisfied the regulatory requirements as required under 37 C.F.R. §1.137(b).

CONCLUSION

Because Petitioner satisfied the burdens set forth under 37 C.F.R. §1.137(b) hereby is **granted**.

The file will be forwarded to Technology Center 1700 to await the filing of Petitioner's Brief consistent with the regulations at 37 C.F.R. §1.192 within two months of the mail date of this decision--extensions of time are governed by the provisions of 37 C.F.R. §1.136.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



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